HON'BLE SRI JUSTICE P.S. NARAYANA

W.P.No.596 of 2006

Date : 4-1-2007

Between :

Maganti Subrahmanyam
and others .. Petitioners

and

The Vijayawada-Guntur-Tenali-
Mangalagiri Urban Development
Authority, represented by its
Vice-Chairman, Vijayawada .. Respondents

HON'BLE SRI JUSTICE P.S. NARAYANA

W.P.No.596 of 2006

**ORDER:**

**1.** Heard Sri N.V.Suryanarayana Murthy, the learned Senior Counsel representing the writ petitioners and Ms.K.Aruna, Counsel representing the 1st respondent and Mrs.Jhansi, the Counsel representing the 2nd respondent.

**2.** The writ petitioners filed the present Writ Petition praying for the issuance of a writ of mandamus to forbear the respondents from taking any action with regard to widening of Bandar road without (i) any Revised Master plan, (ii) compliance with the guidelines issued by this Court by the orders dated 25-9-2002 in W.P.No.18563/2002 and (iii) issuing a notification under Section 4(1) of the Land Acquisition Act and hearing objections of the affected persons without dispensing with Section 5(A) of the Land

Acquisition Act and depositing the compensation as required by the said Act giving liberty to the petitioners to pursue their legal remedies if they are aggrieved by the revised master plan etc.

**3.** This Court while ordering *rule nisi* on 6-1-2006 made the following interim order in W.P.M.P.No.723/2006 :

> "Learned Counsel appearing for the respondents submits that wherever the consent is given by the owners of the buildings/properties, their properties have been demolished for the purpose of road widening but where the landlords have not given consent the respondents are following the procedure prescribed in law under Section 146 and 147 of the Municipal Corporation Act.
>
> Accordingly, the respondents are directed not to demolish or dispossess the petitioners without following due procedure prescribed in law."

**4.** Respondents 1 and 2 filed W.V.M.P.No.2221/2006 and W.V.M.P.No.1950/2006 respectively to vacate the interim order. A reply affidavit also is filed by the petitioners.

**5.** Sri Suryanarayana Murthy, the learned Senior Counsel had taken this Court through the contents of the affidavit filed in

support of the Writ Petition and would maintain that there is possibility of readjustment and realignment and the same may be considered and even otherwise unless and until the procedure is followed the respondents cannot further proceed with the activity.

**6.** Ms.Aruna, the learned standing Counsel representing the 1st respondent had taken this Court through the affidavit filed in support of the vacate application and would submit that inasmuch as the procedure is being followed, the petitioners cannot make out any grievance.

**7.** Mrs.Jhansi, the learned standing Counsel representing the 2nd respondent would submit that inasmuch as enquiry under Section 5(A) of the Land Acquisition Act is being proceeded with, all these objections can be raised and considered and inasmuch as the due procedure is being followed, the writ petitioners cannot make any grievance in relation thereto.

**8.** Heard the Counsel.

**9.** The 1st petitioner had sworn to the affidavit and it is stated that about first week of November 2005 the staff of Vijayawada Municipal Corporation, the 2nd respondent, made markings

for demolition to provide 120 feet wide road. Then the petitioners and their occupants of the road came to know about the widening of the road. On 10-12-2005 it was reported in Indian Express City Edition, Vijayawada that at a high level committee meeting headed by the District Collector, a decision to widen the road to 120 feet in three phases was taken. On 12-12-2005 the Mahatma Gandhi Road (Bandar road) Building Owners and Tenants Welfare Association, Vijayawada, in short referred to as "Association", represented by its office bearers and some members including the 1st petitioner met the District Collector at Machilipatnam. Then the District Collector asked the petitioners to attend a meeting on 13-12-2005 at Vijayawada to represent the grievances stating that the said meeting would be attended by himself and the 1st and the 2nd respondents. On 13-12-2005 the petitioners attended the meeting and opposed the widening of the road to 120 feet disputing the claim of the 1st respondent that such a widening was necessary in view of the growth of traffic on the road etc. It is further averred that at that meeting it was informed that the widening will be restricted to 100 feet and

consequently fresh marking was done for 100 feet widening of the road. The Association gave written representations dated 17-12-2005, 22-12-2005 and 2-1-2006. It is also stated that on 16-12-1969, Vijayawada Municipality was in existence. The old Master Plan which was approved as per G.O.Ms.No.958, M.A. dated 16-12-1969 provided for 80 feet wide road, but it had not been implemented even though the road was less than 80 feet at several places of the road by acquiring the properties and demolishing them. By virtue of proviso to Section 34 of A.P. Town Planning Act 1920, it is mandated that if the land is not acquired within three years from the date of the notification, it shall cease to have any effect as a declaration under Section 6 of the Land Acquisition Act and hence G.O.Ms.No.958, M.A. dated 16-12-1969 is liable to be quashed as held by this Court in **P.Madhava Naidu Vs. Govt. of A.P** [1]**.** It is also further stated that the Vijayawada-Guntur-Tenali-Mangalagiri Urban Development Authority, the 1st respondent, was constituded on 28-12-1978 vide G.O.Ms.No.1007 dated 7-12-1978. Consequent upon such constitution, it was open to it under

Section 8 of the Act to submit a Master Plan to the Government but it had not done so. While the matters stood thus, on 26-12-2005 the 1st respondent-Authority issued a public notice in Rc.No.C8-1865/2005 dated 26-12-2005 inviting objections under Section s12(2), 12(3) and 12(4) of A.P. Urban Areas (Development) Act, 1975, for short the "Act", for the Revision to the Master Plan approved by the Government in G.O.Ms.No.958, M.A. dated 16-12-1969, obviously to cover up its failure to prepare a fresh plan for the last over 27 years being under the wrong impression that the old and obsolete master plan dated 16-12-1969 by virtue of Section 11(2) of the Act will be deemed to be its Master Plan. But it is submitted that the old Master Plan ceased to have any effect statutorily after expiry of three years from 16-12-1969 by virtue of the proviso to Section 34 of the A.P. Town Planning Act, 1920.

Hence the 1st respondent-Authority was to submit a fresh plan to the Government for approval in compliance with Sections 8, 9 and 10 of the Act. Hence the public notice is illegal. However the petitioners will be submitting their objections to the said notice before 12-1-2006 as specified in the

public notice. It is further stated in para-5 of the affidavit filed in support of the Writ Petition that as per the map depicting the various land uses which is the subject matter of the public notice, the road width was shown as 120 feet which is 1½ times more than the road width of 80 feet as per the old and obsolete Master Plan covered by G.O.Ms.No.958, M.A. dated 16-12-1969 and it is therefore a modification which effects important alterations in the character of the plan under Section 12(6) of the Act thus warranting reference of the road width of 120 feet to the Government for its decision. For the said reason also the public notice also cannot be issued under Section 12(3) of the Act by the 1st respondent-Authority.

It is further stated that the 1st respondent-Authority is bound to act according to Section 12 of the Act which it had invoked and proceed with road widening after the Master Plan, as revised, had been notified, after hearing the objections of the affected persons without prejudice to their right to question the notification of such a revised Master Plan before this Court on such grounds, Constitutional or otherwise. Further, it is stated that even after such a revised Master Plan, the

respondents are bound to follow the guidelines issued by this Court in its order dated 3-2-1998 in W.P.No.20884 of 1997 with regard to removal of encroachment and demolition of buildings with regard to widening of the Bandar road also as per the order dated 25-9-2002 in W.P.No.18563/2002 filed by nine occupants of the Bandar road aggrieved by the threat of road widening at the relevant point of time. It is also further stated in para-8 that as per the guidelines the following steps have to be taken :

1. Notice to the occupants to show cause why the proposed action should not be taken, should be given. No such notice was given.
2. Any dispute as to the title should be determined in case of objection. No objections were filed as there was no notice. Hence there was no determination.
3. The area encroached has to be determined. So far as this is concerned, as already stated, the staff of the Vijayawada Municipal Corporation have made markings without any right whatsoever as if there was a Revised Master Plan in force for 100 feet or 120 feet widening as the case may be, overruling the objection by the occupants in a highhanded manner. This is sufficient to expose the arbitrary and capricious action of the respondents violating the provisions of Article 14 of the Constitution of India.
4. In case of demolition, loss has to be

determined on the basis of assessment by the Engineer (R&B). There had been no determination of loss, much less on the assessment of Engineer (R&B). The loss which would be suffered by the affected occupants will run into thousands of crores as Bandar Road is a commercial place with several commercial establishments having multi storeyed buildings. The loss due to demolition cannot be compensated in terms of money, as in some cases the whole building may become useless for the purpose for which it was built and being used at present to wit; (a) Maruthi show room, (b) Karur Vysya Bank, (c) Higginsbothams book shop.

5. To take steps to forthwith disburse the amount quantified towards damages. No such steps had been taken.

6. Notice of 60 days from the date of receipt of order was directed to be given. No such notice was given to anybody much less within 60 days. It is more than 3¼ years since this Court disposed of W.P.No.18563 of 2002 on 25-9-2002 directing the respondents to follow the guidelines, thus showing that the widening of the road was abandoned by the respondents concerned for reasons best known to them.

7. 60 days time to be given to the occupants to file their objections from the date of receipt of the notice referred to supra in (6).

8. On such receipt the respondents were directed to consider the objections, if necessary, by giving an oral hearing and then pass appropriate orders within 3 months

thereafter.

9. If there is any claim for grant or assignment of the property, the concerned officer should consider the same in accordance with law etc. and

10. In case of demolition, the loss caused shall have to be assessed by the R&B Engineer of the area concerned, who before assessing the loss, shall visit the premises along with the officer concerned etc. So far no Engineer had visited the premises of any of the affected persons to assess the loss.

It is also further stated that caveats had been lodged by the Corporation before this Court as well as in Civil Courts at Vijayawada alleging inter alia that the demolition was commenced observing due process of law. The Corporation had demolished the wall of All India Radio overlooking their objections and they had not demolished any private property. Therefore it is specious to contend that they had commenced demolition for road widening. Further it is stated that just opposite to All India Radio there is a four storeyed building belonging to the 1st petitioner which is occupied by Maruti Show room, Kotak Mahindra Bank and National Insurance Company as tenants. Though the road width is reduced from 120 feet to 100 feet, they made a fresh marking in the said

building reducing only 10 feet but not 20 feet stating that unless 10 feet of the said 1st petitioner's building is demolished the width of the road butting the said building from the road divider will not be 50 feet which is wrong. After demolition of the wall of the All India Radio, the width of the road abutting it upto the divider had increased to 54 feet and now the width of the divider is 3 feet whereas it was only 1 foot in the beginning, but it was widened to 3 feet a year ago on account of cricket match in Vijayawada at that time. In fact, the width of the divider in Eluru road as well as other places of the Bandar road is only 1 foot. So the divider has to be reduced to one foot in which event the width of the road from All India Radio will be 56 feet. The width of the road between the divider and the 1st petitioner's building is 37 feet excluding 5½ feet set back in front of the 1st petitioner's building. After removing the existing divider, if the divider is constructed afresh in the middle of the road with one foot width, there will be 46 feet on either side of the divider (56 + 37 +93; 93-1 + 92; 92 divided by 2 = 46) in front of the 1st petitioner's building as well as All India Radio. It is also further stated

that 46 feet is more than sufficient warranting no demolition on the 1st petitioner's building and acquisition of the land of 5½ feet set apart as set back. Thus even assuming that it will be 100 feet wide road as per revised Master Plan when notified in accordance with law, there is no need to touch the existing building in any manner. Further, it is stated in para-11 of the affidavit that after the issuance of public notice on 26-12-2005, the Corporation which says that it is observing the due process of law should stop till the process of law is completed under Section 12(2), 12(3) and 12(4) of the Act, but it is not doing so. It had been published in the Telugu Daily Newspaper on 4-1-2005 that road widening work will commence from 4-1-2005 but the same was not commenced. It is also stated that it is no doubt true that the road widening is proposed to be done in three phases in Bandar road commencing from Phase I and ending with Phase III, but in Phase III which is Benz Circle area, there were some encroachments of the land belonging to the Government and it is reliably learnt that pursuant to the order of this Court the Municipal Corporation of Vijayawada started removing those encroachments by removing the

walls, advertisement, hoardings etc which has nothing to do with the road widening. It is also further stated that the Association in general and the petitioners in particular have reasonable apprehensions that the Corporation which slept over for more than 3¼ years and in utter disregard of the fact that there is no Master Plan as per law providing 100 feet or 120 feet wide Bandar road and which does not want to follow the guidelines as per the Judgment of this Court dated 25-9-2002 and which had filed caveats not only in this Court but also in the local civil Courts of Vijayawada with a view to oppose any interlocutory orders by this Court or the local Civil Courts of Vijayawada, will remove encroachments and demolish the buildings.

**10.** In W.V.M.P.No.1950/2006 filed by the 2nd respondent it was stated in para-3 of the counter affidavit that the District Collector, Commissioner of the 2nd respondent Corporation and the Vice Chairman of the 1st respondent and some other officials of the District Administration attended the meeting convened by the District Collector on 13-12-2005 along with the owners/tenants welfare association of the

Mahatma Gandhi road. In the said meeting the representatives of the said welfare association made a request for widening of Mahatma Gandhi road as two bits i.e., for 90’ from Benz Circle to Ranga Statue and 80’ from Ranga statue to Police Control room. The Collector, after considering the proposals agreed for taking up the widening in three phases to a width of 100’ and requested the residents not to claim any compensation for land and structures since the proposed road widening is intended to ease the traffic congestion and to meet the growing traffic needs in public interest. In the said meeting majority of the representatives of the said welfare association were convinced with the proposal and agreed for the same and also stated that they will submit the consent letters individually so as to take up the road widening. Further they had also accepted for starting the widening process immediately. Accordingly a fresh marking of 100’ width was made and the present properties of the petitioners were also marked for the same. It is also stated that the interpretations given to various legal provisions are not correct. The master plan is a prospective proposal which does not lapse by any time period for the reason of not implementing certain items. The intention of

preparing master plan is to foresee the future needs and to meet them. It is further stated that the petitioners had not revealed the correct facts and are misleading the Hon'ble Court stating that the present status of the road width is not 120' in the master plan and it does not have any approval. In fact a notification was already issued in the year 2002 for modifying the master plan (MPP) for a 120' width road vide G.O.Ms.No.193, M.A. dated 1-5-2002. It is further stated that the averments made with regard to the approval of the master plan and the process related are not concerned to the 2nd respondent it appears that the procedures required to be followed had been followed. It is also stated that the 2nd respondent-Corporation had been following the procedures as laid down under law without any deviation. The 2nd respondent-Corporation had started road widening process and removed certain compound walls belonging to State and Central Government properties with an intention to be transparent in the process and the Government institutions had come forward first in the process. It is also stated that the averments made by the petitioners with reference to Maruthi Show Room building is not

correct. The marking was made according to the Town Survey records and the road width has to be decided from drain to drain but not from divider. However it is open to the petitioners to file their objections if any along with valid proofs. In fact the 1st petitioner gave a representation on 2-1-2006 raising certain objections with regard to the width of the road in front of his building and the same was answered by the 2nd respondent on 11-1-2006. It is also further stated that M.G. Road, commonly known as Bandar road, is an arterial and important road in Vijayawada City having predominant commercial activity. Due to the enormous increase in the vehicular traffic as well as the commercial activity on the road, frequent traffic congestions had been occurring and now and then accidents do happen resulting in injurious to the traveling public and the life of the public passing through. A survey was also conducted in the year 2001 by engaging private organizations by the 1st respondent which revealed that the traffic volume ratio is four times higher than what is allowable. Therefore a decision had been taken in 2002 itself to alter the master plan and to make the M.G. Road into 120’ wide road and accordingly

modification to the master plan had been issued duly following the procedure and was confirmed by the Government also vide G.O.Ms.No.193 M.A. dated 1-5-2002. The same procedure was followed in the case of another important road by name Karl Marx road which was also taken up for widening in 2003 and was implemented. In the present case also the procedure is being followed as provided under Sections 146 and 147 of the Hyderabad Municipal Corporation Act and negotiations are under process. In case if the negotiations fail as provided under Section 146, further action will be taken as per Section 147. It is pertinent to note that the petitioners are twisting the issue by linking the enforcement activity taken up by the 2nd respondent with that of the process under progress in connection with road widening programme. It is further stated that under the provisions of Section 452 of the Hyderabad Municipal Corporation Act the 2nd respondent is charged with the authority to take up enforcement of building rules at any time if any building is found to be in violation of building rules or Zoning regulations and other regulatory provisions. Further it is stated that the building

violations had been observed during the course of survey conducted in connection with proposed road widening and for estimating the compensations to be paid in case the negotiations fail as provided under Sections 146 and 147 of the Hyderabad Municipal Corporation Act. In the survey conducted 22 properties were found constructed in violation of the set backs particularly on the front side. Since road widening proposal is also in the process, the 2nd respondent-Corporation decided to insist for restoring the statutory set back particularly on the front side. In the said process a show cause notice was issued under Section 452 of the Act asking the owners of the said properties to restore their statutory set backs or to show cause as to why the set back should not be restored and also to furnish any approvals or documents in this connection. The said notice was only a show cause notice and the only provision that can be invoked by the 2nd respondent for enforcing building rules and zoning regulations. The said notices were issued on 2-12-2005 and 15 out of the 22 properties identified had received notices and seven of them refused. Then according to the

procedure contemplated under Section 630 of the Hyderabad Municipal Corporation Act the said notices had been pasted to a conspicuous place of the said seven properties. As no reply had been received for the said notices issued upon the said 22 properties a further and final notice under the provisions of Section 636 of the Hyderabad Municipal Corporation Act had been issued on 12-12-2005 and for the said notices also the owners of the said seven properties refused to receive and thereby the procedure of pasting the notices was adopted and on both the occasions necessary panchanama had been conducted and photographs also had been taken. It is further stated that all the said 22 properties are located on the same road and are very near to one another. Further it is stated that the entire procedure had been followed strictly in accordance with law and the present petitioners are also well aware of the facts of the notices which were issued much before the filing of the Writ Petition but the petitioners suppressed the fact of issuance of notices and approached the Hon'ble Court with unclean hands. As the road widening proposal is also under progress simultaneously the 2nd respondent-

Corporation took a liberal view for getting the front set back to be restored by the petitioners themselves since any how the front portions would be affected in the road widening process. In fact after 12-12-2005 the 1st petitioner filed a representation on 2-1-2006 raising certain objections as to the width of the existing road in front of his property and he was clarified with all his doubts and the same was also replied in writing vide endorsement No.Rc.G2-62693/2005 dated 11-1-2006. As the petitioner did not comply with the notices issued on 12-12-2005 and also for the further events the 2nd respondent-Corporation started the enforcement action on 16-1-2006 and certain properties found in deviation had been removed. In fact out of 22 properties against whom notices had been issued, 18 of them had removed the violations voluntarily except petitioner Nos.1, 2 6 and 7. It is further stated that the petitioner Nos.1, 2 and 7 filed O.S.No.17 of 2006 on the file of II Additional District Judge, Vijayawada on 31-1-2006 claiming damages to a tune of Rs.40 lakhs making the respondents 1 and 2 and other officials of the Government and the 2nd respondent-Corporation as parties in their

individual capacity and also in their official capacity. Further, the petitioners also filed complaints before the Hon'ble State Human Rights Commission in H.R.C.No.185/2006 with the same set of allegations suppressing the facts. The petitioners approached the Hon'ble Court by suppressing the fact of issuance of show cause notice under Section 452 and also the final notice under Section 636 of the Hyderabad Municipal Corporation Act for violations of the building rules and also zoning regulations.

**11.** The 1st respondent filed W.V.M.P.No2221/2006 wherein in the counter affidavit filed, substantially the same stand had been taken as that of the 2nd respondent. It is stated in para-3 of the counter affidavit of the 1st respondent that the District Collector, Krishna arranged a meeting with the general public to represent their opinions, grievances, objections, if any in widening of Mahatma Gandhi Road (Bandar road) in the best interests of public at large and more particularly the inhabitants of Mahatma Gandhi Road, Vijayawada, for consideration. Mahatma Gandhi road is proposed to widen in three phases as stated in the affidavit viz., 1st

phase is from Police Control Room to Ranga Statue, 2nd phase from Ranga Statue to Benz Circle and 3rd phase from Benz circle onwards. The Vice Chairman of the 1st respondent also attended the said meeting in Vijayawada and it had been accepted by one and all in the said meeting including the inhabitants of Mahatma Gandhi Road and more particularly the 1st petitioner and others for widening the Mahatma Gandhi Road to 100 feet. The 1st respondent did not undertook the marking work of the 2nd phase and it was undertaken by the Municipal Corporation alone. In the said meeting the building owners, tenants, representatives and all the delegates voluntarily expressed their consent for widening the road to 100' and also expressed their willingness to submit their consent in writing to surrender the widening portion voluntarily without claiming any compensation in whatsoever nature. Further it is stated in para-5 that the Government is having every right and with its discretion can modify the master plan at any point of time, duly considering the requirement, vehicular traffic and rapid growth of the city. Accordingly it had been approved to widen the Mahatma Gandhi Road to 120 feet vide

its G.O.Ms.No.193, M.A. dated 1-5-2002. It is further stated that the 1st respondent-authority and the 2nd respondent will go according to the rules framed from time to time. There is no personal enmity or indiscrimination in its functioning. The explanation given to the measurements is not correct. It is further stated that the formation and widening had been done according to the Town Survey records and the road width will be decided from drain to drain only but not as alleged by the petitioners. Further specific stand is taken in para-9 that at the meeting the association etc., were informed that the widening will be restricted to 100 feet and that consequently fresh marking was done for 100 feet widening of the road and that the Association gave written representations and so it can be safely presumed that the representatives of the Association and other public including the petitioners had participated in the meeting that took place on 13-12-2005 and they had also consented for widening of Mahatma Gandhi road to 100 feet and it also appears they had not objected for the widening upto 100 feet and on the other hand they had also consented for the same

after prolonged discussions and exchange of opinions considering the vehicular traffic and the rapid increase in the commercial activities on the road posing danger to the pedestrians and others. When all the building owners and tenants of the Mahatma Gandhi road consented for widening the road to 100 feet in the second phase relinquishing their right to claim compensation by addressing letters accordingly the question of observing statutory formalities does not arise.

**12.** In the reply affidavit filed, again the self same stand taken in the affidavit filed in support of the Writ Petition had been reiterated and it was stated in para-3 of the rely affidavit that the guidelines which had been issued in Writ Petition Nos.20884/97 and 18563/2002 may have to be followed and these are not being followed. It is also stated that the area encroached had been determined without giving opportunity to the petitioners to dispute the same and straight away a notice under Section 4(1) of the Land Acquisition Act had been given specifying the encroached area. In response to the said notice the petitioners filed their objections and they are pending determination in Section 5-A enquiry. It is further stated that before issuing the

notification under Section 4(1) of the Land Acquisition Act as per the guidelines of this Court the Engineer (R&B) has to determine the loss in case of demolition, but no such determination had been done. On the other hand much before the notification was issued, on 17-1-2006 the 2nd respondent at the behest of the Commissioner had demolished the premises of the petitioners under the pretext that the demolition was being done for violation of building rules. The petitioners filed C.C.No.57/2006 for willful disobedience of the interim directions of this Court dated 6-1-2006 against both the respondents impleading the Vice-Chairman of the 1st respondent and the Commissioner of the 2nd respondent-Corporation by name. In the said Contempt Case it was held that Sri Gulzar Natarajan, the Commissioner, was guilty of contempt of court but not the Vice Chairman of the 1st respondent. Aggrieved by the same, C.A.No.2/2006 was filed and then Sri Gulzar Natarajan, the Commissioner, undertook to restore the demolished premises of the petitioners as they stood before such demolition. Consequently the premises were restored. In view of the above, the Division Bench dropped the

contempt case against the Commissioner Sri Gulzar Natarajan. Aggrieved by the same the 1st petitioner is filing an Appeal in the Apex Court in view of certain observations made in the Judgment of the Contempt Appeal. Ever since the demolition of the petitioners' premises the respondents had been vindictive against the petitioners and are bent upon demolishing the premises of the petitioners once again with a vengeance without any remorse. It is also further stated in para-4 of the reply affidavit that it is pertinent to mention that the interim direction which was given on 6-1-2006 does not at all warrant any coercive steps or vindictive action since this Court gave interim direction not to demolish or dispossess the petitioners without following the due procedure prescribed in law. The respondents had more than enough time from 6-1-2006 to follow the guidelines of this Court, not to speak of their inaction in following the guidelines from 25-9-2002. The respondents will be justified in seeking vacation of the interim direction by bringing to the notice of this Court that they had complied with the due procedure in law. In stead of filing such a counter affidavit the

1st respondent stated in para-6 that it would normally proceed as per the statutory and mandatory provisions of the Act duly considering the Legislative Law and the judicial observations.

The 1st respondent cannot be trusted for a minute that it would normally proceed as per the statutory and the mandatory provisions etc., since it had not given the notice of 60 days etc. In fact if the 1st respondent proceeds as asserted by it as per the judicial observations it would not have kept silent all these years without complying with the guidelines in filing a counter affidavit before this Court stating that it had complied with the due procedure in law and moved this Court to dispose of the main Writ Petition itself as having become infructuous in stead of stating that it would comply with the due procedure in law after the stay is vacated which appears to be virtual intention of the 1st respondent. Therefore the petitioners have a prima facie case. It is further stated that as regards the merits of the Writ Petition even after the counter affidavit filed by the 1st respondent and the balance of convenience is in favour of the petitioners since the demolition that had been done with respect to the premises of

the petitioners had been restored by the 2nd respondent and the petitioners are carrying on their occupation of the premises doing their business as before. It is further stated in para-5 of the reply affidavit that the petitioners premises are in second phase. It is further stated that in para-10 of the affidavit filed in support of the Writ Petition it is stated that if the existing divider on the road is removed and a fresh divider is constructed, there will be no need to demolish the premises of the petitioners for providing road of 100 feet width. The 1st respondent had not denied the said allegation except stating that the explanation given to the measurements is wrong and the road width will be decided from drain to drain. It is also stated that by removing the divider and constructing a fresh divider, the width of the road can be from drain to drain because the petitioners are not asking the drain to the shifted but only the divider to be shifted and this is sufficient to expose the mala fides of the respondents who are bent upon demolishing the premises of the petitioners in stead of justly, fairly and reasonably agreeing to the proposal of the petitioners to shift the divider to the center of the

road providing 50 feet on either side including the width of the divider without giving any reason as to why the divider cannot be shifted to the center of the road and how the existence of the divider as it is absolutely necessary for widening the road to 100 feet. Certain other factual details also had been narrated in the reply affidavit.

**13.** It is brought to the notice of this Court that the learned Standing Counsel representing the 2nd respondent that writ petitioners 4, 5 and 6 already had given consent. The statement of the Counsel in this regard is hereby recorded.

**14.** In the light of the respective stands taken by the parties, this Court is of the considered opinion that inasmuch as it is stated that the enquiry under Section 5-A of the Land Acquisition Act is being proceeded with and also it is stated that the necessary objections already had been raised by the writ petitioners, it is needless to say that the concerned authority is bound to consider such objections and take appropriate decision in this regard. Further, it is needless to say that the directions issued by this Court and also the procedure to be followed may have to be

followed in further proceeding with the further demolition activity. Accordingly, the Writ Petition is disposed of directing the respondents not to take any further steps unless and until the further due process of law is followed in this regard. With the above directions, the Writ Petition is disposed of.

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Justice P.S.Narayana

Date : 4th January, 2007

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[1] **1967(1) ANWR 266**